that hybridizes with the nucleic acid sequence of the bcl-6 locus;

IV. Claim 54, drawn to a gene therapy using an antisense nucleic acid; and

V. Claim 55, drawn to a therapeutic method using an indeterminate antagonists.

In response, applicants hereby elect Group I, claim 46, with traverse for prosecution at this time. Applicants point out that the Examiner's species election requirement regarding claims 48, 51 and 52 is moot in view of applicants' election of claim 46.

REMARKS

In the November 26, 2001 Restriction Requirement, the Examiner alleged that the inventions are distinct, each from the other, because they are unrelated. Specifically, the Examiner asserted that because the inventions of Groups I-V set forth in the Restriction Requirement have acquired a separate status in the art as shown by their different classification, requirement for independent searches, and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicants, however, respectfully request that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an

application can be made without serious burden.

The inventions of Groups I-V are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subjects disclosed. The inventions of Groups I-V are drawn to methods relating to disorders associated with changes at the bcl-6 locus. Applicants therefore maintain that the Groups are not independent and restriction is not proper.

Furthermore, under M.P.E.P. § 803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction is not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Group I would necessarily turn up the prior art relevant to the claims of Groups II-V and *vice versa*. Since there is no burden on the Examiner to examine Groups I-V together in the subject application, the Examiner must examine the entire application on the merits.

In view of the foregoing, applicants maintain that restriction is not proper under 35 U.S.C. §121, and respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Hon. Commissioner for Patents, Washington, D.C. 20231.

12/26/01
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